

# **EXHIBIT 2**

1 prosecutor on duty.

2 Q. (By Mr. Stein) So currently under the E-Charge  
3 system, when the file comes back from Pretrial to the  
4 DA's Office, the log manager is responsible for  
5 transposing the recommended bond amount onto the  
6 charging instrument with oversight by the chief  
7 prosecutor?

8 A. I don't know if I'd use the term transpose, but  
9 they select the type of bond recommended based on what  
10 is reflected on the written public safety assessment,  
11 yes. And then it is then reviewed for accuracy and  
12 confirmed by the chief prosecutor on duty before they  
13 place their electronic signature on the documentation  
14 for filing.

15 Q. And when you say you wouldn't use the word  
16 transpose, why is that?

17 A. I just think there's a simpler way. I would  
18 just put it -- phrase it differently than you.

19 Q. The reason I'm asking is because I want to  
20 understand whether when that log manager looks at what  
21 you're calling the second page of the PSA and sees that  
22 recommendation, whether that log manager just copies  
23 what they see there and submits it to the chief  
24 prosecutor for review, or whether there's some element  
25 of discretion or judgment that that log manager gets to

30

1 use in deciding what amount to submit to the chief  
2 prosecutor to place onto the charging instrument?

3 A. There is no discretion by the log manager or  
4 the chief prosecutor when it comes to the bond amount  
5 that is placed on the charging documentation. It must  
6 correspond with the amount that is reflected on the bond  
7 recommendation portion of the public safety assessment.

8 Q. And so when you say that the chief prosecutor  
9 reviews what the log manager submits for accuracy, how  
10 does the chief prosecutor assess the accuracy of what  
11 the log manager has submitted?

12 A. The chief prosecutor looks at the bond  
13 recommendation form and then looks at the appropriate  
14 tab in the E-Charge file to make sure that the entry is  
15 identical to the recommendation.

16 Q. So the chief prosecutor is not making any  
17 assessment about whether the recommendation received  
18 from Pretrial is accurate, the chief prosecutor is just  
19 assessing whether the amount submitted by the log  
20 manager matches what you're calling the second page of  
21 the PSA; is that right?

22 A. The DA's Office and the chief prosecutor or any  
23 other personnel at intake makes no recommendation or  
24 assessment of what's received from Pretrial. We simply  
25 utilize the information given to us from Pretrial

70

1 trained initially by me as well as observing other  
2 prosecutors on the day shift for two weeks. There will  
3 also -- if there are changes to the law or procedure,  
4 then there will be trainings relative to those  
5 particular topics, as I stated earlier, such as the bail  
6 reform laws that recently went into effect in December  
7 and January and just as needed to address any particular  
8 issues with process, procedure and substance as they  
9 arise.

10 Q. (By Mr. Stein) All right. I'm going to ask  
11 you some questions about whether the actions you took in  
12 Ka'Darian Smith's case were consistent with the District  
13 Attorney's Office's policies regarding communications  
14 with judges and bond requests.

15 Now, in Mr. Smith's case, you were the ADA  
16 present at the 15.17 hearing, correct?

17 MR. NICHOLS: Jeff, so you've mentioned  
18 earlier as part of your long prologue in asking a bunch  
19 of understandings about the deposition that you were  
20 going to be covering matters that relate to the DA's  
21 Office generally in her organizational capacity. Am I  
22 now hearing that you want to ask questions specifically  
23 about a particular case in her individual capacity?

24 MR. STEIN: Mr. Nichols, we've already  
25 litigated whether we get to inquire about whether the

71

1 conduct in that case was consistent with the official  
2 policies. Ms. Keith's position as an organizational  
3 representative is perfectly appropriate to answer  
4 questions about that topic.

5 MR. NICHOLS: Yeah. And, Jeff, I politely  
6 and respectfully disagree with your characterization as  
7 to what was "litigated."

8 My recollection is that there was some  
9 discussion about talking about, in general, about the  
10 policies that the DA's Office has with respect to  
11 ex parte communications with judges.

12 I don't recall any litigation, much less  
13 ruling, that said that it would be appropriate to go  
14 into the facts and circumstances of a particular case.

15 MR. STEIN: I'm just going to pull up --  
16 it's one of like the three points that we raised before  
17 Judge Rosenthal. And specifically, it was whether Ms.  
18 Keith's alerting of prosecutors in Judge Randy Roll's  
19 courtroom about a hearing officer's imposition of a  
20 personal bond in an aggravated assault case was  
21 consistent with HCDAO policies regarding communications  
22 with judges and bond requests.

23 MR. NICHOLS: Yes.

24 MR. STEIN: You raised it before Judge  
25 Rosenthal. I explained the relevance of that line of

1 questioning. Judge Rosenthal agreed that we are  
2 permitted to reopen on that, and so...

3 MR. NICHOLS: Respectfully, I think the  
4 discussion before Judge Rosenthal, which was in the  
5 context of a premotion conference, related to the  
6 policies that the DA's Office has with respect to  
7 ex parte communications.

8 So I just want to make sure it's clear on  
9 the record that now you're not asking for her to testify  
10 about that subject, you're asking her to testify about  
11 an individual case in which she individually was  
12 involved?

13 MR. STEIN: I'm asking her about a case  
14 because it bears on the policies. My questions are  
15 about whether the conduct there was consistent with the  
16 policies.

17 MR. NICHOLS: All I want to make sure to  
18 get clear, Jeff, the record that you're now asking for  
19 -- I'm not saying I'm not going to let her testify to  
20 it. The record that you're asking about is her  
21 individual perception of a particular case as opposed to  
22 general Harris County District Attorney's Office  
23 policies? And if you just help us out by that,  
24 especially in light of your comment at the beginning  
25 that said you were only going to talk about things in

73

1 her capacity as an organizational representative, I  
2 think that'll help move things along.

3 MR. STEIN: In the interest of moving  
4 things along and as a good faith agreement, I'll agree  
5 to ask in your individual capacity with the  
6 understanding that then we will be able to move through  
7 this relatively smoothly, not have to argue about  
8 whether it's properly within the scope so that everyone  
9 can go home hopefully very soon.

10 MR. NICHOLS: All right. Could you ask  
11 your question again, please.

12 Q. (By Mr. Stein) In Mr. Smith's case, you were  
13 the ADA present at the 15.17 hearing, correct?

14 MR. NICHOLS: Objection, form, and beyond  
15 the scope.

16 Ms. Keith, you can answer.

17 A. Yes, I was.

18 Q. (By Mr. Stein) And in that case, you asked the  
19 hearing officer to impose a \$30,000 secured bond?

20 MR. NICHOLS: Objection to form and beyond  
21 the scope.

22 Ms. Keith, you can answer.

23 A. I believe that's what I asked for, yes.

24 Q. (By Mr. Stein) I'm going to throw Exhibit 11  
25 into the chat, going to put it up on the screen share so

74

1 we can all look at it.

2 (Exhibit 11 marked.)

3 Q. (By Mr. Stein) All right. And I'm going to  
4 fast forward to time stamp 26:09.

5 Now, this is a video of that 15.17  
6 hearing; is that correct?

7 A. It appears to be, yes.

8 Q. And beginning at time stamp 26:09, I'm going to  
9 press play. Let me know if you have trouble hearing.

10 (Video played.)

11 Q. (By Mr. Stein) And I'm stopping at time stamp  
12 26:20.

13 Were you able to hear the hearing officer  
14 say, "I will approve you for a personal bond"?

15 A. Yes.

16 Q. Now, following a later unrelated 15.17 hearing  
17 of that same docket, you came back to address the  
18 hearing officer in Mr. Smith's case, correct?

19 A. Yes.

20 Q. I'm going to fast forward to 31:08. And I'm  
21 going to play it for you now.

22 (Video played.)

23 Q. (By Mr. Stein) And I'm stopping at 31:45.

24 Were you able to hear that clip?

25 A. Yes.



75

1 Q. Who was the prosecutor in Judge Roll's  
2 courtroom that you contacted?

3 MR. NICHOLS: Objection, form.

4 A. Allen Otto was the chief in the court.

5 MR. NICHOLS: Yeah, I'm just objecting to  
6 form and beyond the scope; but let's just move through  
7 this.

8 Q. (By Mr. Stein) How did you contact the  
9 prosecutor in Judge Randy Roll's courtroom?

10 MR. NICHOLS: Objection to form, beyond  
11 the scope.

12 A. I believe it was by email.

13 Q. (By Mr. Stein) And what did you tell the  
14 prosecutor to relay to Judge Randy Roll?

15 MR. NICHOLS: Objection to form and beyond  
16 the scope.

17 A. I did not tell the prosecutor to relay any  
18 information to Judge Roll.

19 Q. (By Mr. Stein) What did you tell the  
20 prosecutor in Judge Randy Roll's courtroom?

21 MR. NICHOLS: Objection, form, and beyond  
22 the scope.

23 A. I advised him of the ruling made during the  
24 15.17 hearing as I had prior knowledge from prior cases  
25 of Judge Roll's supposed policy regarding aggravated

76

1 offenses. So I simply advised him of the outcome of the  
2 15.17 hearing for that particular defendant.

3 Q. (By Mr. Stein) Did you advise other  
4 prosecutors in other courtrooms that day of outcomes in  
5 the 15.17 hearing over email as you did in this case?

6 MR. NICHOLS: Objection, form, and beyond  
7 the scope.

8 A. I may have. I don't have any independent  
9 recollection of whether I did or this particular day.  
10 But it is not an uncommon occurrence for the hearing  
11 court prosecutor to notify the trial court prosecutors  
12 of bail hearing outcomes for defendants pending -- with  
13 cases pending in their courts for a variety of reasons.

14 Q. (By Mr. Stein) When the hearing officers issue  
15 a bail ruling in a particular case at the 15.17 hearing,  
16 do you record that ruling in the case file or otherwise  
17 memorialize it as part of the case file?

18 MR. NICHOLS: Now, I think he's back in  
19 the mode of asking an organizational representative  
20 question.

21 MR. STEIN: That's correct.

22 A. Yes, we make internal -- we record it  
23 internally; and it is also memorialized in the  
24 documentation that is generated by the hearing officers  
25 at the conclusion of each bail hearing.

77

1 Q. (By Mr. Stein) And the calendar prosecutors in  
2 the district courtroom will receive the case file with  
3 the hearing officer's ruling recorded in it, correct?

4 A. I'm sorry. What prosecutors are you referring  
5 to?

6 Q. The prosecutor in the home judge's courtroom.

7 A. They have access to the documentation, the  
8 digital documentation, that the hearing court prosecutor  
9 makes; but it's not necessarily directly provided to  
10 them. It's contained as part of the entirety of the  
11 digital file for that case.

12 Q. And that prosecutor will receive the digital  
13 file; is that correct?

14 A. They will have access to it as part of the --  
15 they can access it when they go in to review all of the  
16 accompanying documentation for that case, yes.

17 Q. In other words, the prosecutors in the home  
18 court don't need to be emailed directly about the  
19 hearing officer's ruling to know what the hearing  
20 officer did; is that correct?

21 MR. NICHOLS: Objection, form.

22 A. That's correct.

23 Q. (By Mr. Stein) So if that's the case, why did  
24 you email in your individual capacity, in the interest  
25 of moving things along, why did you email the prosecutor

78

1 in the home judge's courtroom in Mr. Smith's case?

2 MR. NICHOLS: Objection, form, and beyond  
3 the scope.

4 A. As I said, I was aware from prior cases in that  
5 court of Judge Roll's supposed policy regarding personal  
6 bonds on aggravated offenses. And additionally, I did  
7 not feel that a personal bond under the facts and  
8 circumstances of that case was appropriate and felt that  
9 the trial court prosecutors should know, based on the  
10 particular facts of this case, that a personal bond was  
11 granted.

12 Q. (By Mr. Stein) Did the prosecutors in the  
13 courtroom of Judge Randy Roll respond to your email?

14 MR. NICHOLS: Objection to form and beyond  
15 the scope.

16 A. I believe at some point that the chief  
17 prosecutor in the court advised me that they  
18 acknowledged my communication and whatever was  
19 relayed -- whatever information was relayed to me in  
20 response by the prosecutors is what I told the hearing  
21 officer as is reflected in the video.

22 I don't have a specific recollection of  
23 what the exact communication was, but it's pretty much  
24 reflected in what I told the court.

25 Q. (By Mr. Stein) Would that communication have

79

1 been over email?

2 MR. NICHOLS: Objection, form, and beyond  
3 the scope.

4 A. Based on the video and the fact that I didn't  
5 pick up a phone, I believe that it probably was.

6 Q. (By Mr. Stein) Again, I'm asking you this in  
7 your representational capacity. Is relaying information  
8 to prosecutors in a home court or a home judge courtroom  
9 about a hearing officer's bail decision that you  
10 disagreed with consistent with HCDAO policy?

11 A. Are you referring to a particular policy?

12 Q. I'm referring to any policies that HCDAO has,  
13 whether that conduct is consistent or inconsistent with  
14 HCDAO policy?

15 MR. NICHOLS: Objection, form, and beyond  
16 the scope.

17 A. It is not inconsistent with any policy in our  
18 office for one prosecutor to provide information whether  
19 it is subjective or objective to another prosecutor  
20 about a case that they either are personally handling or  
21 is pending in their court.

22 Q. (By Mr. Stein) So the action that you took in  
23 Mr. Smith's case were consistent with HCDAO policies; is  
24 that fair?

25 MR. NICHOLS: I think we're back to

80

1 individual land where we are right now. So objection to  
2 form and beyond the scope.

3 But let's hope that this is Mr. Stein's  
4 last question, and we can move on.

5 A. Yes, it was consistent.

6 Q. (By Mr. Stein) Was your conduct in that case  
7 consistent or inconsistent with trainings or other  
8 guidances that you have been given or that you have  
9 given to other prosecutors at HCDAO?

10 MR. NICHOLS: So we're back to individual  
11 question land. Ms. Keith, I'll let you answer that  
12 question again. But after that, we're going to start  
13 instructing you not to answer. Go ahead.

14 A. Yes, it is consistent with policy and training  
15 that a prosecutor is permitted to communicate with  
16 another prosecutor regarding information relevant to the  
17 case they are personally handling or cases pending in  
18 their court, their assigned court.

19 Q. (By Mr. Stein) And is it consistent with HCDAO  
20 policy for a home court prosecutor to relay information  
21 like that you conveyed in Mr. Smith's case to a home  
22 court judge even though the arrestee and the lawyer are  
23 not present?

24 MR. NICHOLS: Yeah, so that's a different  
25 question that relates to things that she hadn't even

81

1 talked about in her individual capacity. So I'm going  
2 to instruct her not to answer that question.

3 You can ask it another way. Jeff, you're  
4 getting now to the topic that I believe was the subject  
5 of, as you say, litigation, which is what is the Harris  
6 County District Attorney's Office's general policy with  
7 respect to ex parte communications with judges.

8 She is here as a representative to address  
9 that issue if you decide that it's in your clients' best  
10 interests to do that.

11 MR. STEIN: That's the issue that I'm  
12 trying to get at here, Mr. Nichols.

13 MR. NICHOLS: Okay. But the problem is  
14 you referred to this specific case. And you made a  
15 linkage to a communication with a judge that is not  
16 supported by anything that's come out in the deposition  
17 or otherwise. So if you want to ask the question  
18 generally, I have no objection.

19 Q. (By Mr. Stein) I'm asking whether the  
20 prosecutors, the home court prosecutors, relaying of the  
21 information that you provided to Judge Randy Roll in Mr.  
22 Smith's case was consistent with HCDAO policies  
23 regarding ex parte communications?

24 MR. NICHOLS: Yeah, I'm --

25 Q. (By Mr. Stein) And I'm asking you that --

1 MR. STEIN: I'm sorry.

2 Q. (By Mr. Stein) I'm asking you that in your  
3 organizational representative capacity because it bears  
4 directly on what HCDAO's policies are and how they're  
5 applied.

6 MR. NICHOLS: Yeah. And so the way you  
7 phrased it, I'll object to the form. It's beyond the  
8 scope.

9 And, Ms. Keith, if you can answer that  
10 question on behalf of the Harris County District  
11 Attorney's Office, I guess you can, but, you know...

12 A. I can't speak to anything that the prosecutors  
13 in this particular case did once I provided the  
14 information because I was not present to have personal  
15 knowledge about that.

16 But what I can say is that it is the  
17 policy of the District Attorney's Office, as is  
18 reflected in our discretion manual 10.2, that ex parte  
19 communication with the court regarding any matter of a  
20 pending case is inappropriate, and it violates -- it  
21 would violate the office policy as well as could  
22 potentially violate and likely violate the rules of  
23 disciplinary procedure that all lawyers are subject to.  
24 And, you know, obviously the court itself is subject to  
25 the code of judicial conduct.



83

1 So not speaking to this particular  
2 instance, but generally, we are governed by policies in  
3 our discretion manual that prohibit ex parte  
4 communication with a court regarding a pending case.

5 Q. (By Mr. Stein) I understand that you were not  
6 present in the home courtroom, but you were aware that  
7 Judge Randy Roll received information from the home  
8 court prosecutor about this case, correct?

9 MR. NICHOLS: Objection, form.

10 I think he's asking in your individual  
11 capacity, and it's beyond the scope.

12 A. I don't know what information the prosecutors  
13 provided to the judge. As I stated, what I told the  
14 court in the video would be reflective of the  
15 information that I was provided by the trial court --  
16 the home court prosecutor. And I don't believe there  
17 was any reference to any specific statements made by the  
18 court, only that there was a possibility that the  
19 personal bond could be revoked. And that was based on  
20 the information I was provided by that prosecutor.

21 Q. (By Mr. Stein) And you know now that the  
22 personal bond in Mr. Smith's case was revoked in your  
23 individual capacity, correct?

24 MR. NICHOLS: Objection to form, beyond  
25 the scope.

84

1           A.     I believe that it was, but I also believe the  
2     \$30,000 that had been pre-recommended by the risk  
3     assessment had already been posted while he was present  
4     in the courtroom anyway.

5           Q.     (By Mr. Stein) When you say you believe, you  
6     know that there was a Chronicle article written about  
7     how Judge Randy Roll revoked Mr. Smith's personal bond  
8     based on the information that Judge Randy Roll received  
9     from the prosecutor that you contacted?

10           MR. NICHOLS: Objection, form, and beyond  
11     the scope.

12           A.     I believe you brought that up, yes, in the  
13     original deposition.

14           Q.     (By Mr. Stein) And so my question, in your  
15     organizational representative capacity, is whether  
16     assuming that the home court prosecutor relayed all the  
17     information that you gave him about Mr. Smith's case to  
18     Judge Randy Roll, whether that prosecutor's relaying of  
19     that information to the home court prosecutor -- I'm  
20     sorry, to Judge Randy Roll is consistent with HCDAO  
21     policy?

22           MR. NICHOLS: Objection to form and beyond  
23     the scope.

24           A.     It may have. Like I said, I don't know all of  
25     the circumstances surrounding the how or what

85

1 information was provided; and I also didn't read the  
2 Chronicle article, so...

3 Q. (By Mr. Stein) I'm not asking you to be a fact  
4 witness to something you didn't hear. So let me just  
5 phrase the question this way: Hypothetically, if that  
6 home court prosecutor had told Judge Randy Roll the  
7 hearing officer just gave someone charged with an agg  
8 assault a personal bond so that Judge Randy Roll would  
9 revoke that personal bond, would that ex parte  
10 communication have been consistent with HCDAO policy?

11 MR. NICHOLS: Objection, form, and beyond  
12 the scope.

13 A. It may have been.

14 Q. (By Mr. Stein) When you say "it may have  
15 been," do you mean --

16 A. I'm sorry. It may not have been consistent  
17 with policy.

18 Q. And when you -- why are you unable to give a  
19 just decisive answer as to whether it was consistent or  
20 inconsistent assuming the hypothetical that I gave you?

21 MR. NICHOLS: Objection, form, and beyond  
22 the scope.

23 A. Because I don't have all of the information as  
24 to how the communication transpired and who may or may  
25 not have been present.

1 Q. (By Mr. Stein) Can you explain what  
2 information you would need that you don't have about who  
3 may or may not have been present?

4 MR. NICHOLS: Objection, form, and beyond  
5 the scope.

6 A. I don't know if -- exactly what was said to  
7 Judge Roll. I don't know if Judge Roll reviewed any  
8 documents that were on-line relative to the bail hearing  
9 or the defendant's financial affidavit, which is placed  
10 on file. I don't know if -- I do know the defendant  
11 wasn't present because the defendant clearly was present  
12 at the 15.17 hearing, but I don't know if there was any  
13 other representation present.

14 But if an attorney may have been appointed  
15 to review any information prior to Judge Roll making  
16 whatever decision that he made, I don't know any of  
17 that.

18 Q. (By Mr. Stein) So just assuming that, as you  
19 know, the arrestee, Mr. Smith, was not present, assuming  
20 that he did not have a lawyer that he spoke with there  
21 in Judge Randy Roll's courtroom because obviously, Mr.  
22 Smith was in the 15.17 courtroom, would the prosecutors  
23 relaying of information about the hearing officer's  
24 ruling have been consistent or inconsistent with HCDAO  
25 policy? And I'm just asking about the prosecutor's

87

1 relaying of that information to Judge Randy Roll.

2 MR. NICHOLS: And you're asking  
3 specifically about hypothetical relaying of information?

4 MR. STEIN: Yes.

5 MR. NICHOLS: I mean, this is so far  
6 beyond the scope.

7 Objection, form.

8 A. It may have been inconsistent.

9 Q. (By Mr. Stein) Have there been other times  
10 that you have emailed prosecutors in home courtrooms  
11 about hearing officers' 15.17 decisions on bail that you  
12 disagreed with in your individual capacity?

13 A. Yes.

14 Q. Can you estimate how many?

15 MR. NICHOLS: Again, we're back in  
16 individual land.

17 Objection to form, beyond the scope.

18 A. In the four years that -- almost four years  
19 that I participated in bail hearings, I can't give you a  
20 number.

21 Q. (By Mr. Stein) Would you say more than ten,  
22 for example?

23 MR. NICHOLS: Objection, form, beyond the  
24 scope.

25 A. Yes.

88

1 Q. (By Mr. Stein) Would you say more than 40?

2 MR. NICHOLS: Objection, form, beyond the  
3 scope.

4 A. Likely, yes.

5 Q. (By Mr. Stein) Following Mr. Smith's 15.17  
6 hearing, you were aware that the Chronicle published an  
7 article about that hearing in your individual capacity,  
8 correct?

9 MR. NICHOLS: Objection, form, beyond the  
10 scope.

11 And, Jeff, just to give you fair warning,  
12 I'm going to cut off this line of questioning in another  
13 10 minutes, if it's not done by then already.

14 A. I became aware of the article when you brought  
15 it up in the prior deposition.

16 Q. (By Mr. Stein) Your testimony today under oath  
17 is that you are unaware that you were specifically named  
18 in a Houston Chronicle article about Mr. Smith's 15.17  
19 hearing?

20 MR. NICHOLS: Objection, form, beyond the  
21 scope.

22 A. I don't specifically recall being aware of the  
23 article prior to the deposition. It's possible I was.  
24 It was -- but I don't have any independent recollection  
25 of knowing about it before the deposition a year ago.

89

1 Q. (By Mr. Stein) Is it common for your name to  
2 appear in Houston Chronicle articles in your individual  
3 capacity?

4 MR. NICHOLS: All right. I'm going to  
5 instruct the witness not to answer. Let's move on.

6 MR. STEIN: I'm sorry. What is the basis  
7 for the instruction?

8 MR. NICHOLS: Because this has nothing to  
9 do with the 30(b)(6) notice that we're here to resume a  
10 deposition testimony on. I've tried to give you a lot  
11 of leniency, a lot of rope, but now asking what's in the  
12 mind of Jennifer Keith about a Houston Chronicle article  
13 that she's already testified she has no recollection of  
14 seeing, I mean, we've got a lot of people on this.

15 MR. STEIN: Mr. Nichols, I appreciate that  
16 you are welcome to make objections and instruct the  
17 witness not to answer. But I don't want --

18 MR. NICHOLS: You asked me for an  
19 explanation. I'm trying to give it.

20 MR. STEIN: And there is a simple instruct  
21 you not to answer, privileged; instruct you not to  
22 answer, work product.

23 We don't need an extensive monologue, and  
24 we don't need to have an exchange about it. It's your  
25 prerogative to instruct her not to answer. This is

90

1 going somewhere. It's setting up something. It's  
2 something that's important.

3 MR. NICHOLS: Well, let's get there then.  
4 Let's get to what we're here for which is the 30(b)(6)  
5 deposition. If you have questions like we talked about  
6 with Judge Rosenthal about policies of the DA's Office,  
7 let's get to them. Let's not -- let's not --

8 MR. STEIN: That's what I'm trying to ask,  
9 Mr. Nichols. So if I could just proceed. We're not  
10 going to need 10 more minutes for this line of  
11 questioning. I'm trying to finish it up, but I need to  
12 ask this question. And the reason I need to ask it is  
13 because the witness has testified that she was unaware  
14 that she was featured in a Houston Chronicle article  
15 about this very case.

16 MR. NICHOLS: I think she's testified that  
17 she has no recollection of seeing the Houston Chronicle  
18 article about a particular case prior to the time that  
19 you showed it to her in her first deposition. I think  
20 I'm being accurate in that. And I think that's --

21 Q. (By Mr. Stein) And, Ms. Keith, my question is:  
22 Is the reason that you don't have specific recollection  
23 of that article prior to being asked about it in this  
24 case, because you're frequently featured by name in  
25 Houston Chronicle articles?



91

1 MR. NICHOLS: Yeah. So I'm so sorry. I  
2 mean, Ms. Keith, if you can answer a question about  
3 whether you believe that you are the frequent subject of  
4 Houston Chronicle articles, yes or no, please answer  
5 that question so we can move on.

6 A. I don't read the Chronicle.

7 Q. (By Mr. Stein) So is the answer you don't know  
8 whether you're featured by name frequently in Houston  
9 Chronicle articles?

10 A. I don't know if I am or if I'm not.

11 Q. Following that hearing and that article in the  
12 Chronicle, did you ever discuss your actions in Mr.  
13 Smith's case with any supervisors or others at the  
14 Harris County District Attorney's Office in your  
15 individual capacity?

16 MR. NICHOLS: Objection to form and beyond  
17 the scope.

18 A. I don't recall discussing it with any  
19 supervisors or other personnel after the hearing, no.

20 Q. (By Mr. Stein) So following Mr. Smith's  
21 hearing and following that article, you did not have any  
22 further discussions about Mr. Smith's case with anybody  
23 at the Harris County District Attorney's Office?

24 MR. NICHOLS: Objection to form and beyond  
25 the scope.

92

1 Second time asking the question, third  
2 time is a strike. Ms. Keith, would you answer his  
3 question again.

4 A. I do not recall having any conversations with  
5 any supervisors or other District Attorney's Office  
6 personnel specifically regarding this defendant, this  
7 hearing or this case.

8 Q. (By Mr. Stein) And lastly, moving beyond just  
9 conversations, did you receive any feedback in any way,  
10 either positive or negative, from anyone else at the  
11 Harris County District Attorney's Office in response to  
12 your conduct in Mr. Smith's case?

13 MR. NICHOLS: Objection to form, beyond  
14 the scope.

15 I'm sure this is his last question on this  
16 subject, so please answer.

17 A. No, I don't believe that I did either positive  
18 or negative. I got no feedback that I recall.

19 Q. (By Mr. Stein) What is a supplemental DIMS  
20 narrative?

21 A. A supplemental DIMS narrative is also referred  
22 to in our office as a DIMS 41 statement. That is a  
23 statement that is entered into the J-Web system that  
24 provides additional sworn information from either the  
25 original filing officer after a conversation with a

105

1 in the intake division about what information they must  
2 disclose at the time of the 15.17 hearing?

3 A. Since the Public Defender's Office and the  
4 hearing officers have access to all of the same  
5 information that we do for purposes of the bail hearing,  
6 that being the DIMS summary, their local criminal  
7 history, if they have any, their what's called a  
8 criminal history 3 which is local, state and federal  
9 criminal history, if they have any.

10 The only additional information that we  
11 provide is if we have any other information that is --  
12 that we intend to argue any information that is not  
13 included in all of that other information that is  
14 already provided. That's an unusual circumstance.

15 Perhaps if we discover case dispositions  
16 of charges that are reflected in the criminal history,  
17 then we provide that information. But typically, we  
18 don't have any more information than is already known to  
19 all parties at the time of the 15.17 hearing.

20 Q. Does HCDAO policy or practice require  
21 prosecutors to disclose, prior to the bail hearing  
22 before the district court judge, any information in  
23 their possession that tends to strengthen an arrestee's  
24 arguments for personal bond or low bail?

25 MR. NICHOLS: Objection, form.

106

1       A.     Again, we are under Brady obligations as well  
2 as discovery obligations. And at the time of first  
3 appearance in the home court, the prosecutor is not  
4 going to have much more information than we have at the  
5 15.17 hearings. But if they do, then they -- and it's  
6 potentially Brady information or otherwise discoverable,  
7 then they are obligated to turn over that information to  
8 the defense at that time.

9       Q.     (By Mr. Stein) So it's HCDAO policy that  
10 information that strengthens an arrestee's arguments for  
11 personal bond or low bail must be turned over by the  
12 time of first appearance if the prosecutor has it?

13               MR. NICHOLS: Objection, form, and beyond  
14 the scope.

15               Are you asking her about Brady  
16 obligations, or are you asking her about something else?

17               MR. STEIN: I'm asking about HCDAO's  
18 policy about whether or not prosecutors must disclose  
19 that information relating specifically to bail.

20               MR. NICHOLS: Yeah.

21               MR. STEIN: By the time of the bail  
22 hearing before the district court judge.

23               MR. NICHOLS: Yeah. And this is we --  
24 I'll object to form and beyond the scope in terms of  
25 having this witness engage with you in an interpretation